UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

THE PROCTER & GAMBLE COMPANY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 1:17-cv-00185
	)	
RANIR, LLC,	)	**COMPLAINT**
	)	**AND JURY DEMAND**
Defendant.	)	
	)	

Plaintiff, The Procter & Gamble Company ("P&G"), for its claims against Ranir, LLC ("Ranir" or "Defendant"), hereby states and alleges the following:

THE PARTIES AND JURISDICTION

1. P&G is a corporation organized and existing under the laws of the State of Ohio and maintains its principal place of business at One Procter & Gamble Plaza, Cincinnati, Ohio 45202.

2. On information and belief, Ranir is a limited liability company organized and existing under the laws of the State of Delaware that maintains its principal place of business at 4701 East Paris Avenue SE, Grand Rapids, Michigan 49512.

3. This Court has personal jurisdiction over Ranir under the Ohio long-arm statute (O.R.C. § 2307.382) because Ranir contracts to supply and has supplied tooth whitening strips that infringe P&G's intellectual property in this State and in this District.

4. This action arises under the Patent Act, 35 U.S.C. § 1, *et seq*. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)(2) and 1400(b).

STATEMENT OF THE CLAIMS

6. Established in 1837, P&G began as a small, family-operated soap and candle company in Cincinnati, Ohio. Today, P&G maintains its corporate headquarters in this District, and serves consumers around the world with one of the strongest portfolios of trusted, quality, leadership brands.

7. P&G is one of the largest and most highly regarded manufacturers and sellers of consumer products in the United States, with a long history of inventing, developing, and selling high quality goods. P&G is focused on providing branded consumer products of superior quality and value to improve the lives of the world's consumers. The P&G community includes operations in approximately 70 countries worldwide, and its products are sold in more than 180 countries and territories.

8. P&G has invested significant research and development in its tooth whitening strip products and is the owner of several United States Patents generally directed to such technology. The validity of the patents-in-suit has been thoroughly tested through examination by the United States Patent and Trademark Office ("USPTO"), *inter partes* review before the Patent Office, and in several cases before this Court. The patents emerged from *inter partes* review without substantial alterations; indeed, the USPTO declined to even institute review on most of the challenged claims. And, this Court, on summary judgment, adjudged the patents-in-suit not invalid. *The Procter & Gamble Co. v. Team Technologies, Inc., et al.,* Case No. 1:12-cv-00552-TSB, ECF No. 130 (N.D. Ohio July 3, 2013) ("*Team Tech* Case").

9. Ranir is a private label manufacturer of store brand oral care products. It is the most recent private label supplier in a long line that have tried to ride on the coattails of P&G's success by selling tooth whitening strips that infringe P&G's patented technology.

10. Since 2012, P&G has successfully enforced its tooth whitening intellectual property rights in several lawsuits brought in this Court. *The Procter &Gamble Co. v. Be Well Marketing, Inc.,* Case No. 1:12-cv-00264-TSB (N.D. Ohio 2012); *The Procter & Gamble Co. v. Team Technologies, Inc. et al.,* Case No. 1:12-cv-00552-TSB (N.D. Ohio 2012); *The Procter & Gamble Co. v. CAO Group, Inc.,* Case No. 1:13-cv-00337-TSB (N.D. Ohio 2013); *The Procter & Gamble Co. v. MSI Int'l Enters. LLC,* Case No. 1:16-cv-00323-TSB (N.D. Ohio 2016) (collectively, the "Prior Tooth Whitening Strips Cases").

11. This case involves Ranir's manufacture, use, sale, offering for sale, distribution, and importation of tooth whitening strip products that infringe certain patents owned by P&G ("the Accused Products"). The Accused Products purport to be comparable to tooth whitening strip products manufactured and sold under P&G's well-known and commercially successful CREST® line of tooth whitening strip products. The Accused Products are essentially the same as the infringing flexible-strip products at issue in all but one of the Prior Tooth Whitening Strips Cases before this Court.

12. The Accused Products are packaged for sale under various store brands, including for sale in Walmart stores under the Equate private label and in Kroger stores under the Kroger private label. On information and belief, Ranir is offering the Accused Products to other retailers and unless stopped, Ranir will increase its distribution of the Accused Products to include other retailers.

13. This action seeks injunctive and monetary relief for patent infringement in violation of the Patent Act, 35 U.S.C. § 1, *et seq*.

P&G'S CREST WHITESTRIPS® PRODUCTS

14. Nearly 20 years ago, P&G revolutionized the at-home tooth whitening industry with its Crest Whitestrips tooth whitening products, which were the first of their kind.

15. P&G's Crest Whitestrips® tooth whitening products consist of disposable plastic strips coated with an enamel-safe whitening agent and adhesive.

16. P&G's Crest Whitestrips® tooth whitening products revolutionized the tooth whitening industry, resulting in annual sales in excess of $250 million.

THE PATENTS

17. On April 6, 1999, United States Letters Patent No. 5,891,453 ("the '453 patent") entitled "Delivery System For A Tooth Whitener Using A Strip Of Material Having Low Flexural Stiffness," was duly and legally issued to P&G as the assignee of the named inventors. Since that date, P&G has been the owner of the '453 patent. A true and correct copy of the '453 patent is attached to this Complaint as Exhibit A.

18. On April 13, 1999, United States Letters Patent No. 5,894,017 ("the '017 patent") entitled "Delivery System For An Oral Care Substance Using A Strip Of Material Having Low Flexural Stiffness," was duly and legally issued to P&G as the assignee of the named inventors. Since that date, P&G has been the owner of the '017 patent. A true and correct copy of the '017 patent is attached to this Complaint as Exhibit B.

19. The patents-in-suit generally claim a tooth whitening strip in which a tooth whitening or oral care substance containing an active and an adhesive is applied to a relatively thin and flexible strip having certain properties.

20. As an example, claim 1 of the '453 patent claims:

> A delivery system for delivering a tooth whitening substance to front side of a plurality of adjacent teeth wherein the delivery system is substantially transparent and is almost unnoticeable when worn, said delivery system comprising:
>
> a. a strip of flexible material having a sufficient flexibility to form a curved shape on a plurality of teeth, said strip of material being readily conformable to tooth surfaces and to interstitial tooth spaces without permanent deformation when said delivery system is placed thereagainst; and

> b. a tooth whitening substance applied to said strip of material such that when said delivery system is placed on a surface of said teeth, said substance contacts said surface providing an active onto said surface, said substance also providing adhesive attachment between said strip of material and said surface to hold said delivery system in place for a sufficient time to allow said active to act upon said surface.

21. As a further example, claim 1 of the ’017 patent claims:

> A delivery system for an oral care substance, wherein said delivery system is substantially unnoticable when worn, comprising:
>
> a. a strip of material having a flexural stiffness less than about 50 grams/centimeter as measured on a Handle-O-Meter per ASTM test method D2923-95, said strip of material being readily conformable without permanent deformation to a shape of a tooth and its adjoining soft tissue when said delivery system is placed thereagainst; and
>
> b. an oral care substance applied to said strip of material such that when said delivery system is placed on a surface of said tooth ad its adjoining soft tissue, said substance contacts said surface providing an active onto said surface, said substance also providing adhesive attachment between said strip of material and said surface to hold said delivery system in place for a sufficient time to allow said active to act upon said surface.

THE INFRINGING PRODUCTS

22. The Accused Products are private label tooth whitening strips. The Accused Products infringe the claims of the patents-in-suit.

23. The Accused Products are packaged for sale under various store brands, including Walmart “Equate Deluxe Whitening Strips,” Walmart “Equate Ultra Whitening Strips,” Kroger “Deluxe Whitening Strips,” Kroger “Premium Whitening Strips,” and Kroger “Ultra Whitening Strips.” Photographs of the store brand packaging containing the Accused Products are attached to this Complaint as Exhibits C, D, E, F, and G.

24. The Accused Products are packaged in foil pouches, each containing an upper and a lower tooth whitening strip ("Pouches"). Both the upper and lower strip are placed on a single release liner within the foil pouch.

25. Each box of Accused Products contains Pouches and a package insert containing instructions for using the Accused Products ("Instructions"). A copy of one of the Pouches is attached to this Complaint as Exhibit H, and a copy of the Instructions is attached as Exhibit I.

26. Each box of Equate Deluxe Whitening Strips contains 20 Pouches; Equate Ultra Whitening Strips, 10 Pouches; Kroger Deluxe Whitening Strips, 20 Pouches; Kroger Premium Whitening Strips, 14 Pouches; and Kroger Ultra Whitening Strips, 10 Pouches.

27. Ranir manufactures the Accused Products. The Instructions and the Pouches state that the Accused Products are "Manufactured by Ranir, LLC, Grand Rapids, MI 49512." (Exhibits H and I.)

28. P&G has tested the Accused Products and confirmed that the tooth whitening strips (a) are substantially transparent, (b) are almost/substantially unnoticeable when worn, (c) are flexible, (d) conform to tooth surfaces without permanent deformation when applied to tooth surfaces, and (e) have a flexural stiffness less than about 50 grams/centimeter as measured on a Handle-O-Meter per ASTM D2923-95.

29. The Instructions state that the Accused Products are "thin, flexible and coated on one side with a whitening adhesive containing hydrogen peroxide." (Exhibit I.) The Instructions establish that the Accused Products contain a tooth whitening or oral care substance that provides an active onto tooth surfaces and also provides adhesive attachment between the strip of material and tooth surface.

30. The Instructions direct consumers to use the Accused Products to whiten their teeth. (Exhibit I.) The Instructions state that "[t]he product is designed to adhere to your upper

and lower teeth, providing extensive tooth coverage and effective whitening. The product removes stain build-up from tooth enamel." (*Id.*) Thus, the Instructions establish that the Accused Products hold the delivery system in place for a sufficient time to allow the active to act upon the surface of the teeth.

31. Ranir sells the Accused Products to Walmart, Kroger, and possibly other retailers, knowing that Walmart, Kroger (whose company headquarters are located in this District), and possibly others sell the Accused Products in their stores in this State and in this District.

32. On information and belief, Ranir knows and intends that Walmart, Kroger, and possibly others sell the Accused Products in their stores to consumers to use for whitening their teeth.

RANIR'S INFRINGEMENT IS PARTICULARLY EGREGIOUS

33. Ranir's decision to launch the Accused Products before the expiration of the patents-in-suit is particularly egregious and willful.

34. As a result of its repeated involvement with P&G and the patents-in-suit starting as early as 2012, Ranir knew of the patents-in-suit when it began making the Accused Products and then offering them for sale and selling them.

35. P&G marks its Crest Whitestrips tooth whitening products with patent numbers that cover the products, including the patents-in-suit. *See, e.g.,* http://www.pg.com/patents/pdf/Crest_2017.pdf, last visited Mar. 15, 2017. (A copy is attached as Exhibit H.)

36. In 2012, Ranir introduced certain private label tooth whitening strip products that infringed the patents-in-suit.

37. P&G informed Ranir about P&G's intellectual property rights and accused Ranir of infringing of those rights. Ranir voluntarily agreed to stop making and selling the infringing tooth whitening strip products and removed those products from the market.

38. At about the same time, Ranir told P&G that it identified other private label manufacturers who were also infringing P&G's patents. On several occasions, Ranir acted as a self-appointed whistleblower and reported other manufacturers that it had determined were infringing P&G's patents.

39. The Prior Tooth Whitening Strips Cases are a matter of public record. Ranir knew or should have known about this Court's prior constructions of the claim terms of the patents-in-suit and its rulings about the infringement and validity of the patents-in-suit. Yet Ranir is selling and offering to sell the Accused Products that are essentially the same as the infringing flexible-strip products at issue in three of the Prior Tooth Whitening Strips Cases.

40. In 2012, P&G sued one of the private label manufacturers identified by Ranir, Brushpoint Innovations, Inc. ("Brushpoint"), in the Team Tech Suit for infringement of the patents-in-suit.

41. In October 2014, Brushpoint resolved its dispute with P&G and entered into a confidential settlement agreement. In a stipulated press release, P&G reported that "[a]ccording to the terms of the confidential settlement agreement, the Defendants will respect P&G's patents and stop selling the infringing tooth whitening strips."

42. In August 2016, Brushpoint sought and obtained P&G's consent to allow Brushpoint to disclose the P&G/Brushpoint confidential settlement agreement to Ranir in connection with Ranir's purchase of Brushpoint.

43. In early October 2016, Ranir acquired Brushpoint.

44. Notwithstanding Ranir's knowledge of the patents-in-suit, the public record of the Prior Tooth Whitening Strips Cases, its voluntary agreement to stop infringing P&G's patent rights in 2012, and its contractual obligation to stop selling infringing tooth whitening products assumed through its acquisition of Brushpoint, Ranir resumed infringing the patents-in-suit by making, selling, and/or offering for sale the Accused Products.

45. P&G recently observed the infringing products on the retail shelves at Walmart and Kroger. On information and belief, Ranir began making the Accused Products in the United States months before the first Accused Products appeared on the shelves at retailers such as Walmart, Kroger, and possibly others.

46. In the ordinary course, assignment of retail shelf space for oral care products like the Accused Products is negotiated annually for a one-year term that usually starts in the window from February-May. Typically, shelf-space assignments are not re-visited during the next twelve-month period. Thus, if a product is not allocated shelf space at the beginning of the period, the product is not likely to be eligible for purchase by the retailer until the assignment of shelf space is re-evaluated and the manufacturer must wait until the new period before the product can be sold to that retailer.

47. With full knowledge that the patents-in-suit do not expire until June 6, 2017, Ranir manufactured the Accused Products, offered the Accused Products for assignment of shelf space in the 2017-2018 period and did, in fact, begin selling the Accused Products to Walmart, Kroger, and possibly other retailers to avoid having to wait until the next year's reassignment of shelf space.

48. On information and belief, Ranir calculated that it could effectively make the Accused Products, offer them for sale. and sell them with impunity given the upcoming expiration of the patents-in-suit and given the time that it would necessarily take for P&G to

investigate Ranir's infringing conduct, file suit, and obtain the Court's assistance in stopping the illegal conduct.

49. Ranir has intentionally infringed the patents-in-suit for no purpose other than to make sales that would otherwise have been made by P&G.

50. Ranir has acted recklessly because it knew or had reason to know of facts that would lead a reasonable person to realize his actions are unreasonably risky.

51. Ranir has acted deliberately and in bad faith, intentionally reneging on its prior agreements with P&G including the contractual obligations it assumed when it acquired Brushpoint.

52. Ranir's infringement of the P&G patents-in-suit, particularly under these specific facts and circumstances, is a willful, wanton, malicious, and flagrant act of piracy.

53. Ranir has received an unfair advantage in the marketplace by offering for sale and selling the Accused Products before the expiration of the patents-in-suit.

54. Ranir's illegal conduct has cost P&G market share and caused P&G to suffer other intangible harms that cannot be compensated by money damages.

COUNT I – INFRINGEMENT OF THE '453 PATENT

55. P&G incorporates by reference the allegations set forth in paragraphs 1 through 55 as if fully rewritten herein.

56. Ranir is infringing the '453 patent by manufacturing, using, offering to sell, and selling the Accused Products that infringe the '453 patent, including the Walmart "Equate Deluxe Whitening Strips," Walmart "Equate Ultra Whitening Strips," Kroger "Deluxe Whitening Strips," Kroger "Premium Whitening Strips," and Kroger "Ultra Whitening Strips," without authority or license from P&G.

57. On information and belief, Ranir knows, should know, or is willfully blind to the fact that the Accused Products are specially made or adapted for an infringing method. Nevertheless, it has sold, and continues to sell, a material component of the patented invention that is not a staple article of commerce capable of substantial noninfringing use.

58. Ranir has been and is currently actively inducing infringement of the ’453 patent by others, without authority or license from P&G. Among other infringements induced, Ranir has actively induced others to perform, within the United States, the methods recited by the claims of the ’453 patent. Ranir provides instructions to consumers directing them to perform methods that infringe the claims of the ’453 patent. On information and belief, Ranir knows that the induced acts constitute patent infringement.

59. As such, Ranir has knowingly, or with willful blindness, contributed to and induced, and continues to contribute to and induce, the infringement of the claims of the ’453 patent in violation of 35 U.S.C. § 271.

60. Moreover, because Ranir has deliberately and consciously infringed the ’453 patent with full knowledge of the patent in the face of an objectively high likelihood that its actions constitute infringement of a valid patent and with reckless disregard of that likelihood, Ranir’s infringement is willful.

61. P&G has been damaged, in an amount yet to be determined, by Ranir’s acts of infringement and will continue to be damaged by such acts in the future.

COUNT II – INFRINGEMENT OF THE ’017 PATENT

62. P&G incorporates by reference the allegations set forth in paragraphs 1 through 62 as if fully rewritten herein.

63. Ranir is infringing the ’017 patent by manufacturing, using, offering to sell, and selling the Accused Products that infringe the ’017 patent, including the Walmart “Equate

Deluxe Whitening Strips," Walmart "Equate Ultra Whitening Strips," Kroger "Deluxe Whitening Strips," Kroger "Premium Whitening Strips," and Kroger "Ultra Whitening Strips," without authority or license from P&G.

64. On information and belief, Ranir knows, should know, or is willfully blind to the fact that the Accused Products are specially made or adapted for an infringing method. Nevertheless, it has sold, and continues to sell, a material component of the patented invention that is not a staple article of commerce capable of substantial noninfringing use.

65. Ranir has been and is currently actively inducing infringement of the '017 patent by others, without authority or license from P&G. Among other infringements induced, Ranir has actively induced others to use and perform, within the United States, the systems and methods recited by the claims of the '017 patent. Ranir provides instructions to consumers directing them to perform methods that infringe the claims of the '017 patent. On information and belief, Ranir knows that the induced acts constitute patent infringement.

66. As such, Ranir has knowingly, or with willful blindness, contributed to and induced, and continues to contribute to and induce, the infringement of the claims of the '017 patent in violation of 35 U.S.C. § 271.

67. Moreover, because Ranir has deliberately and consciously infringed the '017 patent with full knowledge of the patent in the face of an objectively high likelihood that its actions constitute infringement of a valid patent and with reckless disregard of that likelihood, Ranir's infringement is willful.

68. P&G has been damaged, in an amount yet to be determined, by Ranir's acts of infringement and will continue to be damaged by such acts in the future.

PRAYER FOR RELIEF

P&G respectfully prays for the following relief:

A. That the Court adjudge and decree that Ranir has infringed and is infringing the ’453 and ’017 patents;

B. That the Court adjudge and decree that Ranir has contributed to and induced infringement and is actively contributing to and inducing infringement of the ’453 and ’017 patents;

C. That the Court enter preliminary and permanent injunctions enjoining Ranir, its officers, employees, agents, and all others acting in concert with it or participating with it from further acts that infringe the ’453 and ’017 patents;

D. That the Court enter preliminary and permanent injunctions enjoining Ranir, its officers, employees, agents, and all others acting in concert with it or participating with it from actively contributing to or inducing others to infringe ’453 and ’017 patents;

E. That Ranir be ordered by this Court to account for and pay to P&G damages adequate to compensate P&G for Ranir’s infringement, contribution to, and inducement of infringement of the ’453 and ’017 patents;

F. That the Court treble the damages for Ranir’s willful infringement of the ’453 and ’017 patents.

G. That the Court award pre-judgment interest on the damages;

H. That the Court declare this an exceptional case under 35 U.S.C. § 285;

I. That the Court award P&G its costs and attorneys’ fees incurred in this action; and

J. That the Court award such other relief as it deems just and proper.

JURY TRIAL DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, P&G demands a trial by jury of all issues triable of right by jury.

Dated: March 20, 2017

Respectfully submitted,

/s/ David M. Maiorana

David M. Maiorana (#0071440)
Email: dmaiorana@jonesday.com
Kenneth S. Luchesi (#0089926)
Email: ksluchesi@jonesday.com
Susan M. Gerber (#0070945)
Email: smgerber@jonesday.com
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, OH 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212

Attorneys for Plaintiff
The Procter & Gamble Company